REMARKS/ARGUMENTS

The Examiner is thanked for their review of the application.

Claims 1 to 16 remain in this application. Claims 1, 4 and 6 have been amended. No new matter has been added.

In the Office Action dated April 3, 2007, the Examiner has rejected Claims 1, 4, 6 under 35 U.S.C. 103(a) as being unpatentable over Ouimet et al (US 6,094,641), and further in view of Ouimet et al (US 6,078,893).

Regarding Claims 1, 4 and 6 the Examiner has stated that "Ouimet '641 discloses: wherein said cost model determines *a total cost for each product in a given demand group in a given store for a given time period* by computing a cost for each selected costing activity... (Col. 2, lines 5-1 7, **determining the promotional cost by determining both optimum price and promotional activity, where the <u>promotional cost</u> represents the cost for each selected costing activity**) . . . does disclose **variable costs due to attributes such as promotional activity** . . . and **fixed costs through optimum price**" (Emphasis Added).

Ouimet '641 discloses a "**promotional cost**". The cost is not product specific, but rather dependent upon the "amount of money spent upon the promotion." (Column 2, lines 5-10). In the present invention, as claimed in Claims 1, 4 and 6, the **total costs** are generated for the product at a given time and a given store. This is a very specific cost value **dependent upon the *product's* attributes.** See specification as filed at page 76, lines 2-17. Conversely, promotional costs are **management driven costs unrelated to the product attributes**.

Moreover, "optimum price", as referred to by the Examiner, is not a cost of the product, but rather the opposite. The price is what the consumer must pay for the product, and is related

to the **store revenue**. Thus, "optimum price" as referred to by the Examiner, does not teach or suggest costs, fixed or otherwise. As such Applicants respectfully traverse the rejection.

Additionally, regarding Claims 1, 4 and 6 the Examiner has stated that "Ouimet '641 discloses: ... wherein computing costs utilizes industry standard data, (Col. 5, lines 41-42, **standard fitting applied**)." (Emphasis Added).

Applicants respectfully assert that Ouimet '641 does not teach or suggest utilizing "industry data to provide standard cost estimates" as in Claims 1, 4 and 6. The present invention, as claimed in Claims 1, 4 and 6, uses industry data to **generate estimate cost variables**. Such estimations reduce data collection requirements. See the specification as filed at page 75, lines 6-12.

Conversely, Ouimet '641 discloses that the "**demand model is then fitted to a sales history**." (Column 5, lines 24-25). Model fitting, which is well known, "**tunes**" a model to a data set. (Column 5, lines 40-43). There is no data generation or estimation in Ouimet '641. Furthermore, fitting, as disclosed in Ouimet '641 does not reduce data collection requirements. As such Applicants respectfully traverse the rejection.

Additionally, regarding Claims 1, 4 and 6 the Examiner has stated that "Ouimet '641 discloses: ... 'adjustable market model parameters', which **adds a penalty for values of the parameter in order to further adjust the demand model**. In this case, the addition of the penalty turns a fixed cost into a variable solution. However, **the above limitation is obvious with Ouimet '641 since the volume of sales is a variable parameter**, and it would only be logical to associate variable costs with increasing or decreasing sales, and not costs that are fixed ... Ouimet '893 discloses: configured to receive variable costs and fixed costs, (col. 6, lines 42-61, shows that **when a user selects a market model, it can be one with no price change or one that does not contain adjustable market model parameters, also shows the model using**

adjustable parameters, in this case, the parameters are directly proportional to the variables, therefore, if the parameters are adjusted, so are the variables such as price)." (Emphasis added).

Ouimet '893 discloses a "method for tuning a demand model" such that "[t]he resulting demand model parameters conform to . . . sales history . . . external market information." (See Abstract; Column 1, lines 55-65). Ouimet '893 appears to never mention costs whatsoever.

Moreover, the "penalty" and "adjustable market model parameters" disclosed in Ouimet '893 act to reduce sensitivity "g_i" within the market demand model. (Column 6, lines 41-60). The purpose for the "penalty" and "adjustable market model parameters" appears to **stabilize** "g_i" when there are no price changes since sensitivity is subject to "unstable" fluctuation. (Column 6, lines 41-60). Such demand model tuning is unrelated to cost. Nor does such demand model tuning teach or suggest a variable cost as in Claims 1, 4 and 6.

Lastly, it is noted that there are literally thousands of variable parameters that may affect costs; from weather, to the date, and political climates. Yet Claims 1, 4 and 6 ties variable costs to a single variable, namely sales volume. Applicants must thus disagree with the Examiner's statement that the claimed limitation is "obvious with Ouimet '641 since the volume of sales is a variable parameter." As such the Applicants respectfully traverse the rejection.

Additionally, Applicants respectfully reassert the position that "promotional cost, i.e., the amount of **money spent on the promotion**" is single faceted and inherently different than the multifaceted totality cost approach as is disclosed by the present invention. (Emphasis added). (Column 2, lines 7-8). Ouimet '641 appears to be concerned with "psychological effects" and "visibility", to "tune" demand models, and never appears to suggest application beyond **psychological tuning**. (Column 1, line 55, column 2, lines 1-3, and column 4 lines 4-7). Moreover, the "promotional cost" does not appear to teach or suggest any method for determining said cost. Within Ouimet '641 cost data appears to simply exist. This is not an oversight by the authors of Ouimet '641 as they are referring to simple "promotional costs" which are likely a singular value. For example, a newspaper ad (promotion) may cost $400. **No**

calculation, generation, inflection or estimation is required for such a promotion cost. The present invention, however, **generates a cost model** by utilizing an array of cost variables and by utilizing industry standards data to limit required input. See Claims 1, 4 and 6. This is a fundamentally different function and method than what is disclosed in Ouimet '641, and as such the Applicants respectfully assert that the limited "promotional cost" does not suggest, nor make obvious, the "costing activity including labor, stocking time, transportation, receiving, inventory, bagging, checkout and invoicing, and wherein computing costs utilizes industry standards data" as recited in Claims 1, 4 and 6. As such, Applicants respectfully traverse the rejection.

Additionally, regarding Claims 1, 4 and 6 the Examiner has stated that "Ouimet '893 discloses: wherein said econometric engine clusters said plurality of products into discrete sets of related products whereby each said set is made up of highly substitutable related products . . . (Col. 5, lines 57-64, shows items or products are analyzed according to a given group, in this case, **items that are in a particular demand are in a demand group**, and are subject to a certain demand model, which occurs as a result of comparison of **the demand for a single item in relation to all other items**, and also, col. 8, lines 28-38, shows market is broken into well defined groups for the selection of a model, w/ col. 10, lines 27-37, shows sales of one item can depend on the sales of other items which lead to the demand for each item in a given group, where each set is represented by a group." (Emphasis Added).

Applicants assert that while grouping products by related effects upon demand is well known, clustering products such that "each said set is made up of _**highly substitutable**_ related products" of Claims 1, 4 and 6 is a novel process. (Emphasis added). **Related by demand** is fundamentally distinct from **substitutable**.

Moreover, the grouping of products by demand as disclosed in Ouimet '893 appears to generate a "system of coupled equations that **describe the demand for _each item_**". Conversely, in Claims 1, 4 and 6 "**the internal sales model is for the _discrete sets of highly substitutable_**

__products__." Support may be found on page 67, lines 8-11 of the specification as filed. As such the Applicants respectfully traverse the rejection.

Additionally, regarding Claims 1, 4 and 6 the Examiner has stated that "Ouimet '893 discloses: . . . further wherein said each said set is defined by a user such that each said set is unique to said user, and wherein said sets are generated by comparing product attribute information, . . . w/ col. 2, lines 19-32, shows that **a definition derived from figure-of merit functions, is selected by a user to use in fitting the model parameters** [for a consumer demand model], in this case, each group [set] is unique to said user since the user uses a certain definition for use in the selection of a model)." (Emphasis Added).

Applicants assert that tuning a demand model by a figure of merit function selected by the user does not teach or suggest the "each said **set is defined by a user** such that each said **set is unique to said user**, and wherein said **sets are generated by comparing product attribute information**" of Claims 1, 4 and 6. (Emphasis Added). Instead, selection of figure-of-merit function is performed such that parameter choice "**results in a lower value of the effective figure-of-merit.**" (Emphasis Added). (Column 2, lines 28-31). As such the Applicants respectfully traverse the rejection.

Additionally, regarding Claims 1, 4 and 6 the Examiner has stated that "Ouimet '641 does disclose determining the promotional cost by determining both optimum price and promotional activity, where the promotional cost represents the cost for each selected costing activity Col. 2, lines 5-17, thereby making the above limitations obvious since labor, stocking time, transportation, receiving, inventory, bagging, checkout and invoicing are all commonly utilized activities in product development that influence the actual cost for developing the product."

Applicants reassert that the promotional cost disclosed in Ouimet '641 does not teach or suggest the "total cost" of Claims 1, 4 and 6. See above arguments for a more detailed analysis.

Thus, labor, stocking time, transportation, receiving, inventory, bagging, checkout and invoicing are non-obvious in light of Ouimet '641. As such Applicants respectfully traverse the rejection.

Base Claim 1 has been amended to recite, in relevant part: "an econometric engine for modeling internal sales as a function of price to create an internal sales model, wherein said econometric engine clusters said plurality of products into discrete sets of related products . . . **and wherein the internal sales model is for the discrete sets of highly substitutable products**; a financial model engine for modeling costs . . . wherein computing costs utilizes industry data to **provide standard cost estimates, and wherein the total cost for each product is dependent upon the attribute information of that product**; and an optimization engine . . ." (Emphasis added).

Base Claim 4 has been amended to recite, in relevant part: "creating an internal sales model, wherein said internal sales model clusters said plurality of products into discrete sets of related products . . . **and wherein the internal sales model is for the discrete sets of highly substitutable products**; creating a cost model . . . wherein computing costs utilizes industry data to **provide standard cost estimates, and wherein the total cost for each product is dependent upon the attribute information of that product**; and generating the preferred set of prices . . ." (Emphasis added).

Base Claim 6 has been amended to recite, in relevant part: "an econometric engine for modeling internal sales . . . wherein said econometric engine clusters said plurality of products into discrete sets of related products whereby each said set is made up of highly substitutable related products . . . **and wherein the internal sales model is for the discrete sets of highly substitutable products**; a financial model engine for modeling costs . . . wherein computing costs utilizes industry data **to provide standard cost estimates, and wherein the total cost for each product is dependent upon the attribute information of that product**; and an optimization engine . . ." (Emphasis added).

Support for the amendments to Claims 1, 4 and 6 can be found in page 67, lines 8-11 of the Specifications as filed, which states "model (Equation 1) . . . allows easier comparison within a demand group and between demand groups." Also in page 75, lines 6-12 of the Specifications as filed, which states "The financial model engine 108 uses industry data to provide standard estimates . . . standard estimates helps to reduce the amount of data that must be collected." Also in page 76, lines 2-17 of the Specifications as filed, which states "computes variable and fixed costs for products at specific store locations . . . Some numbers related to properties of the product."

In sum, Claims 1-16 remain in this application and are now believed to be allowable. Base Claim(s) 1, 4 and 6 have been amended and is now believed to be allowable. Dependent Claims 2, 3, 5, 7-16 which depend therefrom are also believed to be allowable as being dependent from their respective patentable parent Claims 1, 4 and 6 for at least the same reasons. Hence, Examiner's rejection of dependent Claims 2, 3, 5, 7-16 are rendered moot in view of the amendment to base Claims 1, 4 and 6. Applicants believe that all pending Claims 1-16 are now allowable over the cited art and are also in allowable form and respectfully request a Notice of Allowance for this application from the Examiner. The commissioner is authorized to charge any fees that may be due to our Deposit Account No. 50-2766 (Order No. DEM1P001). Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at telephone number 925-570-8198.

Respectfully submitted,

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